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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,735	05/23/2001	Naishin Seki	JA9-2000-0085 (8728-516)	9928
46069 7590 12/27/2007 F. CHAU & ASSOCIATES, LLC 130 WOODBURY ROAD WOODBURY, NY 11797				
EXAMINER O'CONNOR, GERALD J				
ART UNIT		PAPER NUMBER		
3627				
MAIL DATE		DELIVERY MODE		
12/27/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 5, 2007 has been entered.

Preliminary Remarks

2. This Office action responds to the amendment and arguments filed by applicant on October 5, 2007 in reply to the previous Office action on the merits, mailed June 5, 2007.

3. The amendment of claims 1-3 and 5 by applicant in the reply filed on October 5, 2007 is hereby acknowledged.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 5-8, and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US 2001/0014868), in view of Kaminsky et al. (US 2001/0047308).

Herz et al. shows, in Figure 1, a system for the automatic determination of customized prices and promotions. The primary functions of the system for the automatic determination of customized prices and promotions (price setting means) 100 are (1) to identify offers that are appropriate for each shopper, (2) to help the shopper become informed about these available offers (product information provision means), and (3) to facilitate any or all of the necessary transactions, such as electronic ordering or payment (retail means), if the shopper decides to accept an offer. Demographic and/or consumer information about the shopper or similar shoppers is obtained from other databases, e.g., from a consumer database purchased from a credit-card company, or a database that correlates the response to telemarketing campaigns with demographic variables. The main computer selects offers from the offer database that are likely to result in profitable sales (price trend means, basic rule of supply and demand). "Retail sales state" and means for managing it, as vaguely defined in applicant's specification, is shown throughout the reference in demand curves and more specifically on page 32, paragraph 301, which states, "Time series methods are also useful for detecting trends; one could do a linear regression on sales for a certain product over time, determining the overall direction of a

product's sales. This information could be used to adjust offer-generating strategies, as it would indicate a waxing or waning of a customer's overall interest in a given product." But, while the price may be reset and changed with time in the system of Herz et al., it is not specifically disclosed that the pricing is set dynamically, at the time the user looks at it, and it is not disclosed that any trend information regarding the pricing is displayed to the user.

However, Kaminsky et al. disclose a similar system, which system indeed includes that the price is set dynamically (see, for example, ¶ 20) and that the price trend information is displayed to the user (see, for example, ¶ 35 and Figure 3).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Herz et al. so as to set the price dynamically and to display the price trend information to the user, both in accordance with the teachings of Kaminsky et al., in order to generate more sales by urging the buyer to act quickly by giving the sense that the offer being made was a good deal that would not last for long.

Regarding ranking the popularity or evaluations of the products, while the pricing in both Herz et al. and Kaminsky et al. can be set based on the popularity of the items, neither reference specifically discloses ranking the items based on popularity or evaluations of the products. However, ranking items on the basis of their popularity or evaluations, then setting a price based on the ranking, is a well known, hence obvious, element of functionality to include in a list of products for sale, and official notice to that effect is hereby taken. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have further modified

the system of Herz et al. so as to rank the items for sale in order of their popularity or evaluations, and set the price in accordance with the rank, as is well known to do, in order to generate more revenue by charging higher prices for the better products, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Response to Arguments

6. Applicant's arguments filed October 5, 2007 have been fully considered but they are not deemed persuasive.

7. Regarding the arguments against the references individually (i.e., that the claims are not anticipated by either of the individual references), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to the disclosure.

9. All rejected claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is (571) 272-6787, and whose facsimile number is (571) 273-6787.

Official replies to this Office action may now be submitted electronically by registered users of the EFS-Web system. Information on EFS-Web tools is available on the Internet at: <http://www.uspto.gov/ebs/portal/tools.htm>. An EFS-Web Quick-Start Guide is available at: <http://www.uspto.gov/ebs/portal/efs/quick-start.pdf>.

Alternatively, official replies to this Office action may still be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies should be directed to the central fax at (571) 273-8300.** Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

December 21, 2007

/Gerald J. O'Connor/
Primary Examiner
Group Art Unit 3627